



August 26, 1999

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR99-2416

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127067.

The City of Garland (the "city") received a request for "a copy of all bids received for Billing and Collection of Emergency Ambulance Fees." On behalf of the companies that submitted bids to the city, you contend that the bid proposals are excepted from disclosure under sections 552.104 and 552.110 of the Government Code.

Since the property rights of third parties may be implicated by the release of the bid proposals, this office notified Texas Medical Data Systems, Southwest General Services, and Maximum Ambulance Reimbursement Systems about the request for information. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). None of these companies responded to our notice. Therefore, we have no basis to conclude that the bid proposals are excepted from disclosure under section 552.110 of the Government Code. *See Birnbaum v. Alliance of Am. Insurers*, 1999 WL 314976 (Tex. App.-- Austin May 20, 1999, no pet. h.) (section 552.110 excepts from disclosure commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision); Open Records Decision Nos. 552 at 5 (1990) (section 552.110 requires a party to establish, by a *prima facie* case, that information is a trade secret), 542 at 3 (1990).

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception

is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978). You have not demonstrated that section 552.104 is applicable in this instance. Therefore, the city must release the requested bid proposals to the public.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 127067

Encl. Submitted documents

cc: Mr. Larry Bergman
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